

**IN THE INCOME TAX APPELLATE TRIBUNAL, AHMEDABD
BENCHES “A” BENCH AHMEDABAD
BEFORE SHRIO. P. MEENA, ACCOUNTANT MEMBER
AND MRS. MADUMITA ROY, JUDICIAL MEMBER
I.T.A. No. 2504/AHD/2017:Assessment Year: 2009-10**

Deputy Commissioner of Income-Tax, Central Circle – 2(1)(2) Vadodara	Vs.	M/s. Sun Pharmaceutical Industries Ltd. (Early known as Ranbaxy Laboratories Ltd.) SPARC, Tandalja, Vadodara 390020 PAN: AAACR 0127N
Appellant		Respondent

Assessee by	ShriBandishSoparkar, Advocate, AR
Revenue by	Smt. AparnaAgarwal, CIT(D.R.)
Date of hearing	10.04.2019
Date of pronouncement	10.04.2019

ORDER

PER O. P. MEENA, AM

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income tax (Appeals)-2, Vadodara (in short “the CIT (A)”) dated 30.08.2017 pertaining to Assessment Year 2009-10, which in turn has arisen from the assessment order passed under section 143 (3) read with section 263 dated 08.12.2016 of Income Tax Act,1961 (in short ‘the Act’) by the Deputy Commissioner of Income-Tax, Circle – 2(1)(2) Vadodara (in short “the AO”).

2. The grounds of appeal raised by the Revenue are as under:

“1.1 That in the facts and circumstances of the case, and in law, Ld. CIT(A) erred in directing the AO to allow the assessee weighted deduction u/s. 35(2AB) even though the required conditions are not fulfilled.

1.2 That in the facts and circumstances of the case, and in law, Ld. CIT(A) erred in directing the AO to allow the assessee weighted deduction u/s. 35(2AB) on the basis of the order dated. 22.12.2016 of the Hon’ble ITAT, without considering that this order had been set aside to a limited extent by the Hon’ble High court, vide their order dated 14.08.2017.

1.3 That in the facts and circumstances of the case, and in law, Ld. CIT(A) erred in directing the AO to allow the assessee weighted deduction u/s. 35(2AB) without considering that Form

3CL had not been submitted therefore, the conditions laid down in section 35(2AB)(4) read with Rule 6(7A) had not been fulfilled.

1.4 That in the facts and circumstances of the case, and in law, Ld. CIT(A) erred in directing the AO to allow the assessee weighted deduction u/s. 35(2AB) without considering that Form No. 3CM was issued by the Secretary, D.S.I.R., only on 11.06.2009 and was not in existence during the previous year relevant to A.Y. 2009-10, and therefore, the conditions laid down in section 35(2AB) read with Rule 6(7A) had not been fulfilled.

1.5 The alternatively and without prejudice, in the facts and circumstances of the case, and in law, Ld. CIT(A) erred in directing the AO to allow the assessee weighted deduction u/s. 35(2AB) without verifying the actual expenditure by the assessee in terms of the Hon'ble High Court's order dated 14.08.2017, and without giving the AO an opportunity to verify this."

3. Brief facts are the assessee has filed return of income on 27.09.2009 declaring loss of Rs. 1414.11 crores which was assessed under normal provisions and book profit of Rs. 29.47 crores under section 115JB. The assessment was completed under section 143 read with section 144C on 30.01.2014. Subsequently, Pr. CIT -2 Vadodara passed an order under section 263 dtd. 28.03.2016 and set-aside the aforesaid assessment holding that weighted deduction of Rs. 237,77,05,310 was wrongly allowed. Consequently, assessment was made on 08.12.2016 by disallowing the above claim made under section 35(2A) in assessment order under section 143 (3) read with section 263 of the Act.

4. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). Before whom the assessee has filed an order of Tribunal in I.T.A.No. 1390/Ahd/2016 A.Y. 2009-10 dated 22.12.2016 by which disallowance proposed by the Pr. CIT -2 Vadodara was allowed. The CIT (A) held that since the order under section 263 was not quashed by the tribunal hence, Ground No. relating to validity of assessment order passed under section 143 (3) read with section 263 was bad-in-law was not accepted and this grounds of appeal was dismissed. However, with regard to Ground relating to disallowance of

weighted deduction under section 35(2AB) to the tune of Rs. 237,77,05,310 being covered by the above decision of tribunal were directed to be allowed.

5. Being aggrieved, the Revenue has filed this appeal before the Tribunal. The Ld. CIT (DR) relied on the order of the AO.

6. Au contraire, the learned counsel for the assessee submitted that the issue of disallowance of weighted deduction under section 35(2AB) has been allowed by the tribunal in appeal against the order under section 263 of the Act dated 28.03.2016. The CIT (A) has followed the same and allowed the deduction of weighted deduction claimed and allowed by the AO in original assessment. The Revenue has filed an appeal against the order of Tribunal against I.T.A.No. 1390/Ahd/2016 dtd. 22.12.2016 passed in respect order under section 263 allowing the appeal. However, the Hon'ble Gujarat High Court has dismissed the Revenue appeal vide Tax Appeal No. 541 of 2017 dtd. 14.08.2017(PB-11 to 14) by upholding the order of ITAT dtd. 22.12.2016. The SLP filed by the Revenue also stands dismissed by the Hon`ble Supreme Court in SLP Np. 18273/2018 dated 20.07.2018. Hence, the issue stands settled and is duly covered by the aforesaid decisions of TRIBUNAL, Hon`ble High Court and Hon`ble Supreme Court.

7. We have heard the rival submissions and perused the relevant material on record. We find that the issue of disallowance of weighted deduction amounting to Rs. 237,77,05,310 stands allowed by the Ld. CIT (A) , Tribunal , Hon'ble High Court and Hon`ble Supreme Court in above mentioned citation by holding that merely because the prescribed authority failed to send intimation In Form No. 3CL, would not be reason enough to deprive the assessee`s claim of deduction under section 35(2AB) of the Act. In

view of this matter, respectively following the order of above mentioned authorities, we do not find any infirmity in the order of CIT (A), accordingly, same is upheld. Ex-consequenti, the Ground No. 1.1 to 1.5 of the Revenue are therefore, dismissed.

8. In the result, the appeal of the Revenue is dismissed.

9. The order pronounced in the open Court on 10.04.2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

TRUE COPY

Ahmedabad: Dated: 10th April, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, Ahmedabad